

The OECD Guidelines for Multinational Enterprises

NATIONAL CONTACT POINTS



Japanese NCP: Peer learning and review

April 2012 - Toyko, Japan



During the 2011 update of the Guidelines, the National Contact Points (NCPs) for the OECD Guidelines on Multinational Enterprises agreed to engage in joint peer learning activities. In particular, peer reviews and voluntary NCP peer evaluations.

This report presents the findings of the first such evaluation which was undertaken by the Japanese NCP in April 2012.

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PREFACE

The members of the peer review team are very pleased to submit to the National Contact Points and the OECD Investment Committee the following report on the peer learning and review of Japan's National Contact Point which took place in Tokyo on 17-19 April 2012.

This is the first peer learning exercise of this kind to be conducted under the 2011 updated OECD Guidelines for Multinational Enterprises and their Implementation Procedures.

Our special thanks and appreciation go first to Mr. Toru Shimizu, the Chairman of the Japanese NCP, for his leadership in volunteering this peer review and ensuring its resounding success. We also would like to thank the Japanese Ministry of Foreign Affairs and other concerned parties for an outstanding organisation of the discussions.

We believe that our key objectives have been met. We have gained an invaluable understanding of Japan's corporate responsibility reality and have learned from each other about what makes a good NCP and how we could better live up to each other's challenges.

This outcome can also be attributed to the unique insight provided by government officials and various stakeholders, especially Keidanren, whose Vice Chairman is Vice-Chair of BIAC, RENGO, Sustainability Forum Japan, and the UN Global Compact Japan Network, for which we are most grateful. We are also pleased that representatives of TUAC and OECD Watch were able to join some sessions open to stakeholders.

We have found that the Japanese peer learning model, conducted interactively and with a light touch, is particularly well suited for voluntary peer reviews. We hope this model will inspire similar exercises in the future.

It has been a privilege and honour, for each and all of us, to have been invited to participate in this landmark review. We will keep the best memories of Japan's legendary hospitality.

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REPORT BY THE REVIEW TEAM

Background

On 25 May 2011, at the OECD Ministerial Meeting, adhering governments to the OECD Guidelines for Multinational Enterprises adopted a new update of this instrument.¹ This update significantly expanded the tasks of National Contact Points (NCPs) and enhanced the role of peer learning and review as a tool for helping NCPs better perform their duties as the implementation mechanism of the Guidelines.²

In October 2011, Mr. Toru Shimizu, Chair of the Japanese NCP, announced to the Working Party of the OECD Investment Committee, his country's intention to be the first NCP to be reviewed by its peers under the updated Guidelines and the revised Procedural Guidance. He also proposed that this exercise be conducted in the first half of 2012. This decision was welcomed by the Working Party, and by all NCPs at their meeting of 8 December 2011.

Japan further elaborated on its plans in a Background Note circulated in November 2011³. The main elements of the peer review were subsequently agreed on by NCPs in December 2011. The preparatory steps and composition of the peer review team were finalised between January and early April 2012. The peer review took place in Tokyo on 17-19 April 2012.

The present report presents the results of this voluntary exercise proposed by Japan. Part II recalls the Japanese NCP's main objectives and proposed modalities for the peer learning and review. Part III describes the preparatory process. Part IV provides useful insight on responsible business conduct (RBC)⁴ in Japan. Part V presents the main findings, lessons learned, and recommendations of the peer review team.

The report was presented and discussed at the NCP meeting of 17-19 June 2012. The final report was transmitted to the OECD Investment Committee in October 2012.

Main goals and modalities for conducting a voluntary peer learning and review

In the background note it developed for its voluntary peer learning and review, the Japanese NCP defined the goals for the exercise as follows:

¹ The changes include a new chapter on human rights, a broad operational principle to exercise due diligence, including over supply chains, a proactive agenda to assist enterprises in meeting their societal challenges under the Guidelines and clearer and stronger implementation procedures.

² Section II.5c) of the revised Procedural Guidance specifically provides that the Investment Committee will...“facilitate peer learning activities, including voluntary peer evaluations, ... on the implementation procedures of the Guidelines such as promotion and the facilitation of conciliation and mediation.”

³ See Annex 1.

⁴ Responsible business conduct (RBC) is the expression used by the OECD but stakeholders may use corporate social responsibility (CSR) instead.

- To create a platform for sharing good/best practices and to initiate mutual learning processes for other NCPs based on the updated Guidelines.
- To evaluate the institutional arrangements, promotional activities, handling of specific instances, and the proactive agenda of the Japanese NCP by writing a peer learning and review report and presenting the results to the OECD Investment Committee.
- To understand how the Japanese NCP's stakeholders, especially Japanese enterprises, are dealing with corporate social responsibility based on and related to the OECD Guidelines.

The Japanese NCP also recognised that there is room for improvement in the structure and the functioning of their NCP. It thus wanted to share and learn from experiences and good practices of other NCPs and put to good use their constructive feedback and advice.

At the same time, the Japanese NCP felt that there might be insufficient understanding of the corporate social responsibility reality in Japan. Social responsibility has been embedded in corporate culture and philosophy for hundreds of years. Many Japanese stakeholders engage in initiatives to improve corporate behaviour. Japanese multinational enterprises have their own corporate responsibility challenges to overcome. This information needs to be more widely shared and understood.

Given these considerations, the Japanese NCP suggested an interactive peer learning and review, which employed a light touch, would be the most appropriate model for this exercise. Unlike traditional OECD peer reviews, this exercise would not be directed at evaluating the performance of an NCP against established benchmarks but, instead it should allow both the reviewed NCP and the other participating NCPs to learn from each other how best to further the objectives of the Guidelines in light of their individual challenges. In addition, The Japanese NCP explicitly stated its intention to involve relevant stakeholders and organisations in this peer learning and review process and to include a field visit so that participants would obtain a first-hand knowledge of the particular context in which the Japanese NCP operates.

The preparatory process

The preparatory stages consisted of:

- Japan's preparation, with the assistance of the OECD Secretariat, of two questionnaires, namely a self-evaluation for the Japanese NCP⁵ and a questionnaire addressed to stakeholders⁶:

Responses were provided to the review team by the Japanese NCP and the Japan Business Federation Keidanren, the Japanese Trade Union Confederation JTUC-RENGO, the UN Global Compact Japan Network and the Sustainability Forum Japan.

- The formation of the peer review team:

Six NCPs (Germany, Mexico, Netherlands, Norway, the United Kingdom and the United States) responded to Japan's invitation to form a review team. In addition, representatives of TUAC and OECD Watch were invited to join sessions open to stakeholders. The team nominated Professor Hans Petter Graver, the Chair of the Norwegian NCP, to be its Chair. The OECD Secretariat was invited to participate as an observer.

⁵ See Annex 3.

⁶ See Annex 4.

- The preparation of a three-day programme⁷ for the review team:

The programme was divided into:

- a) a general orientation meeting with the members of the Japanese NCP;
- b) three half-day dialogue sessions with business, labour representatives, and stakeholders;
- c) a working session of the review team; and
- d) a wrap up session with the members of the Japanese NCP. A field trip to Hitachi Industrial Equipment Systems Co. Ltd., Narashino, Chiba closed the visit.

FDI and RBC in the Japanese context

Japan is a major FDI player

The Guidelines express adherents' expectations on how their national enterprises ought to behave outside their home jurisdictions and how foreign enterprises should behave within their borders. Japan's current foreign direct investment (FDI) position is as follows.

Preliminary estimates for 2011 indicate that Japan's FDI outflows have doubled in the past year from USD 56 billion in 2010 to USD 114 billion in 2011, propelling the country to the position of the second highest investing OECD country in 2011 (as compared to 4th and 5th positions in 2009 and 2010, respectively).⁸ On a cumulative basis up to 2010, Japan's outward FDI stocks stood at USD 953 billion, representing 16 % of its GDP. The United States (30%), and China (8%) and South East Asia are the main destinations of this outward investment. FDI inflows, on the other hand, have been significantly more modest, currently standing around USD - 2 billion.⁹ The United States (34%) and France (9%) are the most important sources of this inward FDI.¹⁰

A longstanding corporate tradition for RBC¹¹

As highlighted by members of the Japanese NCP and various interlocutors, notably from business, it is not unusual to hear that social responsibility is embedded in the Japanese corporate culture, forming part of Japanese enterprises DNA, particularly in long-standing companies. The "*Sampo Yoshi*" philosophy, developed centuries ago, stipulates that successful companies are those that can give "triple satisfaction": to the customer, to society and to themselves.¹² Japanese corporate management is also known for the importance attached to the long term and the development of trusted relationships with communities so that enterprises are considered good corporate citizens. They have therefore voluntarily addressed RBC as an

⁷ See Annex 2.

⁸ This is below however Japan's historical record of USD 128 billion in 2008.

⁹ This has traditionally been the case although in 2008, Japan's FDI inflows reached the historic record of USD 24 billion.

¹⁰ Source: OECD International Direct Investment Database.

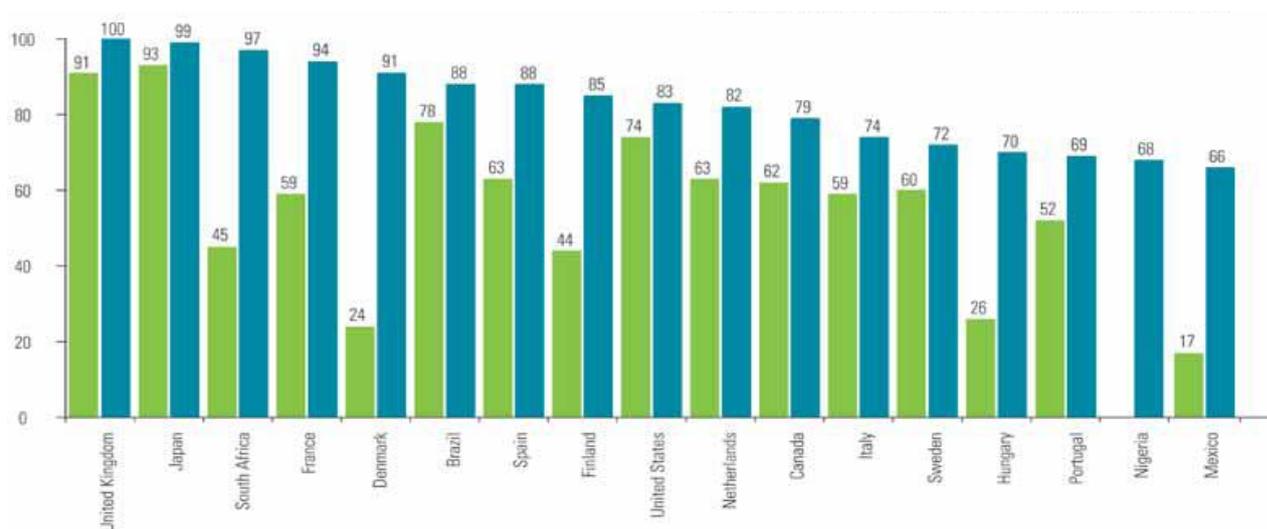
¹¹ This section is based on presentations made by METI and Keidanren to the review team, as well as on the field visit to Hitachi Industrial Equipment Systems Co., Ltd.

¹² Sampo Yoshi is often translated as company behaviour that gives triple satisfaction, i.e. "good for the seller, the buyer and society".

integral part of their corporate activities. This is a recurrent explanation for business continuity management, enterprise risk management, and the resiliency of Japanese companies to adversity, such as in the case of the 2011 Great East Japan Earthquake.

It directly follows from this that the private sector is the main driving force behind RBC in Japan. In a recent survey conducted by KPMG¹³, almost 100 % of the reviewed Japanese companies engaged in CSR reporting, making Japan one of the top performers (see figure 1).

Figure. 1: Percentage of companies CSR reporting (2008 and 2011)



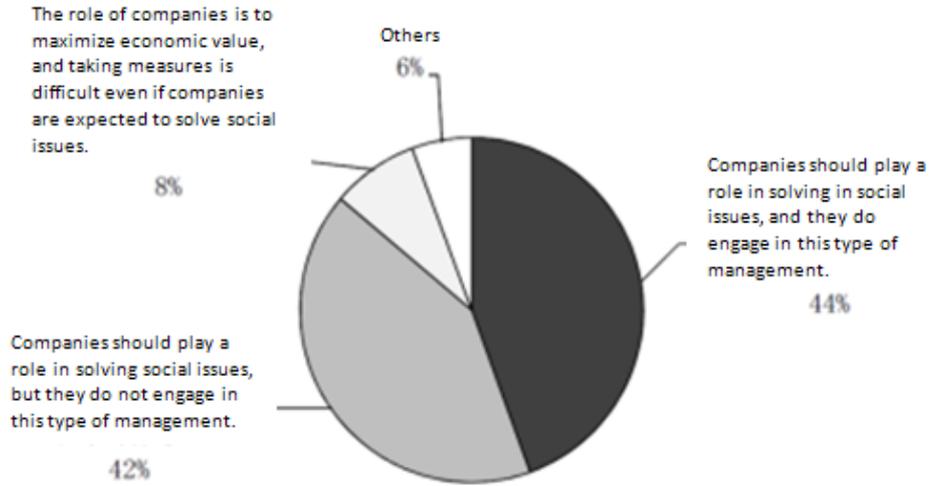
Source: KPMG, International Corporate Responsibility Reporting Survey 2011

The Japanese Association of Corporate Executives has also found that 86% of Japanese managers hold the view that “companies should play a role in solving social issues” (see Fig. 2). As compared to philanthropy or charity, sustainability and contribution to social progress have gained considerable uptake as RBC issues in Japan.¹⁴

¹³ KPMG, International Corporate Responsibility Reporting Survey 2011

¹⁴ See <http://www.oecd.org/investment/guidelinesformultinationalenterprises/csrpolicyinjapan.pdf>

Fig. 2: Social Issues and the Role of Corporations in Japan



Source: “Survey of Management Awareness of Corporate Social Responsibility”, Japan Association of Corporate Executives

The Keidanren’s Charter of Corporate Behaviour and its Implementation Guidance, last revised in 2010¹⁵, defines corporate responsibility as “a responsibility to contribute toward the economic development of society by creating added value and generating employment for the benefit of society at large”. The Charter and its Implementation Guidance refer to the OECD Guidelines, the Universal Declaration of Human Rights, and ISO 26000.

At the level of the individual enterprise, several examples of high profile RBC initiatives can be found: Nippon Steel Corporation has adopted the Keidanren Charter, Panasonic’s labour management dialogue was acknowledged as a best practice by the ILO; and Sony is a founding member of the Electronic Industry Citizenship Coalition (EICC).

In addition, the review team highly appreciated the visit to the Hitachi Industrial Equipment Systems Co., Ltd. This enterprise is part of the Hitachi Group which comprises 913 subsidiaries – 562 of which are outside Japan – employing almost 370.000 persons around the world. Hitachi Industrial Equipment Systems Co., Ltd. focuses on the development of energy-efficient and green equipment, both for its own plants and for customers. This is how the enterprise puts in practice its business concept “Contributing to environmental protection and energy conservation”, which forms an integral part of the Hitachi Group RBC strategy of “creating simultaneously economic and social value, to realise a sustainable society”.¹⁶

¹⁵ See Annex 5

¹⁶ See Hitachi Group Sustainability Report 2011 Digest: www.hitachi.com/csr

The supporting role of the Japanese government

As a founding member of the Guidelines in 1976¹⁷, Japan has played a major role in shaping OECD's vision of RBC in the world as well as those of its enterprises. Japan is the OECD's leading promoter of the Guidelines in Asia, particularly in China and South East Asia, which are the main destinations of Japanese foreign investments outside the OECD. In addition to the leading responsibilities of the **Ministry of Foreign Affairs** on the Guidelines, efforts to promote RBC are widely spread within the government from the Cabinet office to key ministries.

The **Cabinet Office** has established the "Roundtable Discussion Concerning Social Responsibility", a framework that encourages collaborative RBC efforts among all stakeholders and Government representatives. A new "Collaboration Strategy" has also been elaborated in March 2011, aiming at the development of a safe and sustainable society.

The **Ministry of Economy, Trade and Industry (METI)** has a leading role in promoting RBC. It has developed disclosure guidelines for internal control and for intellectual property management as well as a structured strategy to link RBC with business opportunities, social business¹⁸ and promotion of diversity. METI has also established Japan's Inclusive Business Support Centre, with the aim of solving issues facing the world's developing nations and contributing to the improvement of income levels, particularly in Asia. In the field of social business and as part of the disaster recovery effort, METI is working to assist the recovery and revitalisation of lagging economic regions. Concerning diversity, the Ministry recently compiled and released the Report "Task Force on Encouraging Corporate Vitality and Diversity" for the purpose of promoting diversity centred on women's success.

The **Ministry of the Environment** encourages business operators to conduct environmentally sound business activities and to publish environmental reports. This Ministry has also developed a practical guideline for environmental reporting - the Environmental Report Guideline to Realise a Sustainable Society. In addition, it has recently contributed to the elaboration of the "Principles for Financial Action towards a Sustainable Society", which has been signed by 131 Japanese financial institutions. This initiative aims to expand environmental finance by promoting, among others, direct spending on businesses that reduce their environmental impact.

The **Ministry of Health, Labour and Welfare** conducts surveys and research concerning the development of business environment that enables RBC. The Research Group of the Ministry, which is composed of invited experts and academics on employment and industrial relations, published in 2008 a Report on reporting measures specifically devoted to labour issues.

¹⁷ Japan became a Member of the OECD on 28 April 1964.

¹⁸ A social business is commonly understood as any business which has a social rather than financial objective. For further information, see Muhammad Yunus, *Creating a world without poverty—Social Business and the future of capitalism and Building Social Business—The new kind of capitalism that serves humanity's most pressing needs* (2009).

Main findings, lessons learned, and recommendations of the peer review team

In developing this part of the report, the review team underlined the importance of the following considerations.

- a) Japan is a major investment player, notably in Asia, and its strong support for the Guidelines has been a determining factor in spreading awareness and interest for the effective use of the Guidelines as a leading RBC benchmark in this part of the world. Japan needs to be complimented for its contribution to successful OECD outreach activities on the Guidelines in Asia, such as those organised in cooperation with ESCAP in Bangkok 2009 and with the ILO in Jakarta in 2011, neither of which would have been possible without its strong support. The fact that Japan chairs the APEC Investment Expert Group offers also new opportunities to promote the Guidelines in this forum.
- b) RBC benefits already from considerable buy-in by Japanese enterprises. Japanese enterprises share the values promoted by the Guidelines and put them in practice, even though they may not explicitly refer to the Guidelines in their codes of conduct.
- c) Cultural factors play an important role in the way Japanese companies view and perform RBC.

In agreement with the Japanese NCP, the review team has developed recommendations in three different areas:

- institutional arrangements;
- promotion; and
- the functioning of specific instance facility.

This part of the report also contains a general recommendation to the Japanese government regarding resources. Finally, the NCP was invited to consider whether the final report of this voluntary exercise should be made public as this would contribute to a better understanding of the role of the Japanese NCP and the Guidelines in Japan and abroad.

Institutional arrangements

Structure of Japan's NCP

The Japanese NCP was established in 2000. At that time, it was composed of the Ministry of Foreign Affairs (MOFA) alone. Soon after, it reorganised its structure: following two intergovernmental consultations, the Japanese NCP was re-organised in 2002 as an inter-agency body composed of the Ministry of Foreign Affairs (MOFA), the Ministry of Economy, Trade and Industry (METI), and the Ministry of Health, Labour and Welfare (MHLW), each with a distinct role. MOFA was given the task of hosting the NCP and coordinating the work on the Guidelines, METI that of supporting business activities in overseas markets, and MHLW that of providing advice on labour issues.

An Advisory Body was created in 2008 to assist the Japanese NCP; it was referred to as the NCP Committee of Japan. This Committee consists of the NCP itself, the Japan Business Federation (Keidanren), which is a member of BIAC, and the Japanese Trade Union Confederation (Rengo), which is a member of TUAC. The Committee meets regularly, in principle four times per year.

The NCP relations with other governmental bodies are assured by the OECD division of MOFA, which shares information on the Guidelines with relevant ministries and agencies. It consults with different sections of MOFA, such as the sections that deal with the UN Commission on Human Rights, the ILO, the ISO, other international laws and regulations related to the Guidelines issues. A similar internal communication is in place at METI and MHLW. At the same time, the review team noticed that such dialogue is intermittent and relies on the NCP solicitation of feedback; which means that the potential benefit of consultations with governmental colleagues working on issues related to the Guidelines is not fully exploited.

Lessons learned and recommendation

The current NCP structure seems appropriate in assigning each member Ministry a specific role depending on its specific competencies. At the same time, the Guidelines touch upon numerous and complex RBC issues and their implementation procedures can be demanding, particularly in light of the results of the 2011 Update.

The Japanese Government, through its various Ministries, offers a wide range of skilled professionals who could provide additional beneficial inputs to the NCP activities.

Either the creation of an informal NCP sub-committee body for a permanent exchange of information and mutual support or the inclusion of other Ministries as members of the NCP could be actively considered by the Japanese authorities.

Functional equivalence

Visibility, accessibility, transparency and accountability are the four fundamental criteria that should guide NCPs in carrying out all their activities. The Japanese NCP has taken a number of steps to give the concept of “functional equivalence” a concrete meaning. In particular, on:

Visibility: Stakeholders (business and trade unions) have welcomed the NCP’s invitation to join the NCP Committee. The body is seen as a useful framework to exchange information, thanks to the organisation of regular meetings for which provisional agendas are always circulated in advance for comments by the Committee members.

Accessibility: The NCP has worked well and is appreciated by stakeholders for its efforts to communicate in timely and substantive fashion with all of them. The NCP decision to have the updated Guidelines and their procedures published in both Japanese and English has been particularly welcomed.

Transparency: The transparency criterion is a critical one for gaining the confidence of the general public. The NCP is working well concerning its application to institutional and promotional activities, as well as to relations with stakeholders and other interested parties. [Trade unions and NGOs have sought some clarifications on Japan’s Procedural Guidance for the handling of specific instances (this is taken up under section (c) below).]

Accountability: The Japanese NCP regularly and actively participates in the meetings organised by the OECD. The Annual Report of its activities is not circulated within the government. It is also apparently not circulated to OECD accredited stakeholders and, in all cases, is not made public.

Lessons learned and recommendation

The Japanese NCP's efforts to fulfil its functions according to the criteria established by the Procedural Guidance of the Guidelines are going in the right direction. In order to facilitate the enhancement of its public profile and its activities in relation to the Guidelines, the NCP is invited to enhance web-communication on its current activities. In this regard, it could look at the approach to communication in the new OECD dedicated website on the Guidelines. Japan's NCP is also invited to consider the possibility of making its Annual Report available on this website, as well as circulating it more widely within the Japanese Government.

Relations with stakeholders and international organisations

As already mentioned, the Japan Business Federation and the Japanese Trade Union Confederation are permanent members of the NCP Committee. The Japanese NCP is also able to obtain the necessary information and feedback from a wider range of national stakeholders through activities such as seminars and various kinds of gatherings organised by interested parties.

Concerning international organisations, the Japanese NCP develops and maintains good relations with several major international organisations including:

- The **Sustainability Forum Japan**, which was a **member of GRI**: MOFA was invited as a guest speaker for symposiums on CSR and study groups about the Guidelines organised by SFJ.
- The **UN Global Compact Japan Network**, to which more than 150 Japanese organisations belong. For the last two years, the Japanese NCP has been invited as a guest speaker for four seminars on the Guidelines, organised by the UN Global Compact Japan Network and its affiliate consulting company.
- The **ILO**, in 2010 the Japanese NCP was invited as a guest speaker for a seminar on the Guidelines organised by the ILO Association of Japan. The outline of the presentation made by the Japanese NCP was then included in the Japan ILO Association's booklet "Sekai no Rodo: World Labour" in November 2010. The booklet was circulated to stakeholders interested in the Guidelines.

With regard to the High Commissioner on Human Rights, the Japanese NCP recognises the significance of the "UN Guiding Principles on Business and Human Rights".

Lessons learned and recommendation

The Japanese NCP has succeeded in the challenging task of developing good and stable relations with a wide range of national stakeholders and relevant international initiatives. Such cooperation is recognised as a key contributing factor to the effectiveness of the NCP activities and as such, the performance of Japan's NCP in this regard should be highly commended.

To provide practical support to the NCP in raising awareness on the Guidelines, business associations are fundamental partners. It would then seem appropriate to increase their active involvement in the NCP Committee, for example by inviting the Japanese Association of Business Executives (Keizai Doyukai) and the Japanese Chambers of Commerce and Industry to become members.¹⁹

¹⁹ Keizai Doyukai's membership comprises approximately 1,300 top executives of some 900 large corporations in Japan, all of whom share the common belief that corporate managers should be key players in a broad range of political, economic, and social issues. JCCI is a network of comprehensive local

Information and promotion

The NCP developed a specific two-page brochure on the updated Guidelines and the Japanese NCP. Also, last year, it completed the Japanese translation of the Guidelines official text, updated its Procedural Guidelines, and made available the Japanese and English versions on its website.

In the last two years, the Japanese NCP was often invited as a guest speaker to various meetings organised by stakeholders, mainly at the national level. The NCP also took care of keeping the embassies network duly informed and it responded to several enquiries about the Guidelines.

Guidelines information and promotion – focus on non-adhering countries

The Japanese version of the Guidelines, the updated NCP Procedural Guidelines²⁰ and related brochure, are all available on the NCP webpage²¹, in the Ministry of Foreign Affairs site, and are regularly disseminated at meetings and contacts with stakeholders and interested parties.

During the updating process and after the Guidelines were adopted in May 2011, the Japanese NCP has been invited as a guest speaker to 14 events (seminars, information sessions, and study groups and to a symposium about the Guidelines organised by various businesses, labour unions and NGOs) and had about 25 exchanges of opinions with experts and stakeholders.

With regard to dissemination of the Guidelines in non-adhering countries, the Ministry of Foreign Affairs sent a preliminary instruction to 233 overseas establishments (Japanese embassies and consulate-generals) in total, just after the completion of the updated Guidelines in May 2011. The aim was to inform them of the essence of the updated Guidelines and ask them to consult with the NCP in Tokyo if instances which seem to be related to the Guidelines came about or began to emerge in their countries. Furthermore, MOFA informed its overseas establishments after the Japanese translation was completed and the website updated. The embassies network is also actively involved in assisting the Japanese NCP.

Lessons learned and recommendation

The Japanese NCP has devoted great efforts in developing appropriate printed material and in promoting the Guidelines. It managed to take part in several national meetings and it developed an inclusive process to actively involve the embassies network.

Given the role of Japan as a major source of FDI in Asia, the Japanese NCP is therefore encouraged to actively pursue these activities with a sustained degree of commitment and energy.

Cooperation with stakeholders to promote the use of the Guidelines

Since the update of the Guidelines, the Japanese NCP has received requests from business stakeholders and trade unions to speak at explanatory seminars and gatherings so that they may have a better understanding of the updated text.

economic organisations made up of the representatives of some 1.35 million member businesses nationwide in Japan. It embraces from large and medium-sized corporations to small firms and sole proprietors.

²⁰ See Annex 6.

²¹ <http://www.mofa.go.jp/mofaj/gaiko/csr/housin.html>

In particular, the Japanese NCP was involved in meetings concerning the Guidelines, organised by both the Japan Business Federation (Keidanren) and the Japanese Trade Union Confederation (Rengo), both of which are members of the NCP Committee. The Japanese NCP participated as a guest speaker in seven seminars organised in the last two years by Keidanren. Also, RENGO organised a series of training seminars on Multinational Enterprises and the OECD Guidelines in Asia. For example, in Hanoi (Viet Nam), in August 2011, Rengo held a special event to disseminate the updated Guidelines in Vietnamese and to mobilise Vietnamese stakeholders to engage in awareness-raising activities of their own. The Japanese ambassador to Viet Nam attended the seminar.

Lessons learned and recommendation

Cooperation is important to maximise the positive impact of each promotional event. One possible avenue for enhancing this impact would be to develop in close cooperation with stakeholders a clear list of priority issues and target countries. This would also help increase coherence between the various promotional events of stakeholders and provide a basis for mutual assistance in this regard.

Results of promotion

RBC is a common and shared voluntary practice in Japan, with origins deeply embedded in the country's entrepreneurial culture²². However, there is very limited data on the actual use of the Guidelines by Japanese enterprises. The information collected during the field visit suggests that the Guidelines are less known than other leading international RBC instruments such as the UN Global Compact or the ISO26000 Guidance on Social Responsibility. Moreover, when "the Guidelines are known by enterprises", "it is not clear to them how to integrate them into their decision making process".

In addition, there is the issue of the perceived role of NCPs in general. Some stakeholders mainly view the Japanese NCP as having a "tribunal" function. They are less aware of it being a useful source of information on RBC, of its constructive role in helping enterprises to cope with societal challenges and respond to risks of adverse impact (the objective pursued by the proactive agenda) and of its role in facilitating dialogue and finding mediated solutions to disputes relating to the observance of the Guidelines.

Lessons learned and recommendation

Because of their traditional concern for RBC, Japanese enterprises are a fertile soil for the Guidelines. There is a paradox, however, in the fact that the Guidelines seem to be less known than other leading initiatives. Japan might therefore consider the feasibility of undertaking a survey on knowledge and use of the Guidelines by Japanese multinational enterprises. This could provide a useful tool for increasing the effectiveness of the promotional activities of Japan's NCP.

A stronger involvement of business and social partners in the NCP promotional activities would also be highly beneficial in developing and sharing the right message concerning the NCP's role, as a venue for constructive dialogue and dispute prevention on RBC issues.²³

²² See Section III.

²³ See in relation to the role of conflict prevention, the NCP activity involving the embassy network.

The specific instances facility

So far, Japan has accepted four specific instances, all concerning employment and industrial relations issues. Three of them relate to the activities of Japanese companies in non-adhering countries (Malaysia, the Philippines and Indonesia). One specific instance was recently completed and the results of the procedures are available on the OECD website²⁴.

The updated Guidelines provide guiding principles for the implementation in specific instances. Consistent with the core criteria for functional equivalence in their activities NCPs should deal with specific instances in a manner that is:

Impartial: The NCP should ensure impartiality in the resolution of specific instances.

In the three specific instances that concerned activities in non-adhering countries, Japan's NCP made use of the local embassies and instructed them to be as neutral as possible in their communications with the parties involved and to follow fairly the Guidelines.

Predictable: The NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.

The Japanese NCP is among the first NCPs to have updated its "Procedural Guidelines" to reflect changes made to the Procedural Guidance on the Guidelines and posted it on its web-site. This document explains in detail the information that should be provided by complainants when submitting a specific instance and the steps and timescale that the Japanese NCP will follow in handling it. The Japanese NCP also sent instructions to overseas establishments, including in Asia, asking them to notify the headquarters in Tokyo of any issue related to the Guidelines, even if it is in the preliminary stages. This assures a good opportunity for the Japanese NCP to operate as a proactive mechanism, and to adequately deal with potential risks of specific instances before they become formal complaints.

Equitable: NCPs should ensure that the parties can engage in the process on fair and equitable terms.

The Japanese NCP has provided reasonable access to sources of information relevant to the procedures of the Guidelines by publishing it on the web. The review team also noted that the Japanese NCP is committed to ensuring equitable and fair access of the parties to a specific instance

Compatible with the Guidelines: NCPs should operate in accordance with the principles and standards contained in the Guidelines.

The review team took note that some clarification questions have been raised pertaining to parallel proceedings.

²⁴ <http://www.oecd.org/investment/guidelinesformultinationalenterprises/ncpstatements.htm>

Lessons learned and recommendation

The Japanese NCP should be commended for actively using the Japanese concept of “*Sampo Yoshi*” (triple satisfaction; to the customer, to society and to the company) in the promotion of the OECD Guidelines. It may also wish to use the concept as an aid in dealing with specific instances related to the OECD Guidelines. The Japanese NCP is encouraged in this context to continue to highlight that the over-reaching framework of the Guidelines is internationally-recognized standards.

In light of the recent update of the Guidelines, the Japanese NCP may also wish to continue to draw on other NCP experiences with the implementation of the new guiding principles for implementation in specific instances. In particular, it may consider further ways to enhance the application of these principles.

Mediation

As explained during the field visit, Japan’s NCP tries to maximise its contribution to solve the issues raised under the specific instance facility. At the same time, Japan’s NCP also expects that the parties engage in a specific instance procedure in “good faith”.

So far, for various reasons, the mediation conducted by the Japanese NCP has not led to solving any specific instances. The mediation activities of the Japanese NCP are not regulated by any kind of Japanese legislation or legal instrument. Moreover, mediation is not a widely used method to solve conflicts arising from industrial relations in Japan. This lack of experience with mediation has been evident in the way complainants have approached the four specific instances submitted to Japan’s NCP. However, the review team believed that the Asian culture of non-confrontation and consensus decision making model could provide a valuable contribution to mediation as a tool for NCPs.

All concerns expressed by the Japanese NCP have been experienced by the NCP review team as well, e.g. little confidence between the complainants and enterprises, difficulties in overcoming the lack of constructive communication among parties, and appropriate evaluation of steps to be taken in case of a stall in the mediation process.

Lessons learned and recommendation

The Japanese NCP is to be commended for its willingness to play a positive and active role at all stages of the specific instances procedures.

Mediation is a complex and critical issue for NCPs, and an NCP’s ability to create trust and the enabling environment necessary for dialogue and mediation is key. Sharing experiences during the field visit was highly beneficial for all participants. It was agreed that special efforts should be deployed, notably at the OECD, to build the mediation capacity of NCPs. The Norwegian NCP proposed a special capacity building session at the June 2012 meeting, where a mediation tool was shared with all NCPs, which could serve as a tool also for the Japanese NCP.

Parallel proceedings

All four cases considered by Japan’s NCP have also been subject to parallel proceedings. This experience was useful in showing the difficult task of balancing the need not to interfere with ongoing legal procedures with the need to assure an adequate consideration of a specific instance.

The review team welcomed the fact that in handling these cases, the Japanese NCP has paid due attention to legal proceedings.

At the same time, the review team noted that the trade union representatives pointed out the existence of a possible discrepancy between the Japanese Procedural Guidelines and the Revised Procedural Guidance of the Guidelines, in that the former provides that “in cases where judicial proceedings have already been concluded, complaints are considered as deserving no further examination” while, according to the latter, “NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted..”

In other words, the Procedural Guidance on the Guidelines encourages NCPs to consider whether they could offer their good offices even when cases are concluded. However, they are not expected to reopen findings of the courts but only address issues not covered by the judicial decisions. This understanding could be reflected as well in the Japanese Procedural Guidelines.

Lessons learned and recommendation

The Japanese NCP has paid due attention not to interfere with existing judicial proceedings and did not receive any complaints in this regard from either party involved in the four specific instances it handled.

For the future, the NCP is invited to assess the provision in its Procedural Guidelines which states that specific instances related to concluded judicial proceedings will not be examined. It is recommended that such cases should still be taken into consideration for a possible initial assessment, in light also of the possibility that they might present aspects not treated at the legal level.

Transparency and confidentiality

The Guidelines Implementation Procedures state that “it remains important to strike a balance between transparency and confidentiality in order to build confidence in the Guidelines procedures and to promote their effective implementation”.

In the Japanese experience, parties in a specific instance tend to have reservations about making information publicly available both during the intermediary stages and at the end of the procedures.

As acknowledged by trade unions and NGOs consulted in Tokyo, there is a common understanding of the value of “confidentiality”, because confidentiality allows protecting sensitive information as well as the safety of the parties involved. This is consistent with Section C-4 of the Procedural Guidance of the OECD Guidelines.

On the other hand, stakeholders also believe the principle of “transparency” should prevail in the concluding phase of a specific instance as regards the information released in the final statement or report. Transparency is crucial to enhance the credibility of NCP efforts in providing an impartial and independent forum for problem-solving and in building public confidence in the Guidelines. This is consistent with paragraph 31 of the Commentary on the Implementation Procedures of the OECD Guidelines, which states that “NCPs are expected to always make the results of a specific instance publicly available in accordance with paragraphs C-3 and C-4 of the Procedural Guidance”.

Lessons learned and recommendation

The Implementation Procedures of the Guidelines provides that NCPs should consult with stakeholders on the public release of information provided in a specific instance, but it is within the NCP's discretion to make the final decision on the content of the final statement or report.

The review team welcomed the intention of the Japanese NCP to be as transparent as possible as provided by the Japanese Procedural Guidelines. It also invited the Japanese NCP to release its future statements or reports not only on the OECD website but also on its own website.

Resources and budget

MOFA officials are in charge of the Guidelines implementation as well as of representing the Japanese government at the OECD Investment Committee. This allows them to have broader views on RBC issues but this comes at the cost of an increased workload.

The Japanese NCP does not have an exclusive budget earmarked for its activities. Neither does it have any full-time member of staff exclusively allocated to activities related to the Guideline²⁵.

All consulted stakeholders pointed out the importance of raising awareness about the Guidelines, which implies in the first place developing and printing the materials appropriate for dissemination, as well as organising and participating in various meetings (seminars, conferences, workshops). All such activities are stated to be of primary importance, particularly for the promotion of a level playing field among Japanese and foreign enterprises.

Lessons learned and recommendation

The Japanese NCP is to be commended for remarkable achievements so far with limited available resources. The review team felt that most likely the increased workload that could result in the future from the implementation of the recent update of the Guidelines could justify an increase in the resources allocated to the Japanese NCP.

²⁵

A temporary member of staff specialised on CSR was hired at MOFA from April 2009 to March 2010.

ANNEX 1

BACKGROUND NOTE BY THE JAPANESE NCP FOR THE VOLUNTARY PEER LEARNING AND REVIEW OF 17-19 APRIL 2012

Schedule of peer learning and review

At the meeting of the Working Party of the OECD Investment Committee held on 5-6 October 2011 in Paris, the Japanese NCP volunteered to be the first country to be peer learned and thus peer reviewed under the OECD Guidelines for Multinational Enterprises “the OECD Guidelines”, updated in May 2011. At the 12th meeting of the NCPs held on 8 December 2011 in Paris, the Japanese NCP explained its concept paper for the voluntary peer learning and review of the Japanese NCP, and the concept was approved.

The peer learning and review of the Japanese NCP would consist of the following four components:

	Components	Time Schedule
1	Questionnaire-based review - A questionnaire to NCP Japan - An answer report to the Secretariat (These include questions/answers from stakeholders)	By the end of January 2012 By the middle of March 2012
2	Peer learning and review visit - Visit to Tokyo by peer learning and review team	From 17-19 April 2012
3	Paris-based peer learning and review - Evaluation (preliminary) in Paris at the OECD Investment Committee	In June 2012
4	Evaluation - Finalization of a evaluation report at the OECD Investment Committee	In December 2012

Members of the peer learning and review team travelling to Tokyo

As of 27 February 2012, the peer learning and review team travelling to Tokyo consists of four countries, namely Germany, the Netherlands, Norway and UK. Global Reporting Initiatives (GRI) will also visit Tokyo on this occasion.

The goals of the peer learning and review

The goals of the peer learning and review are as follows:

- To create a platform for sharing good/best practices and to initiate mutual learning processes for other NCPs based on the updated Guidelines.
- To evaluate an institutional arrangement, promotional activities, handling of specific instances, and the proactive agenda of the Japanese NCP, by writing a peer learning and review report and presenting the results to the OECD Investment Committee.
- To understand how stakeholders of the Japanese NCP, especially Japanese enterprises, are dealing with Corporate Social Responsibility based on and related to the OECD Guidelines.

Method of the peer learning and review

In March 2012: Paper-based peer learning and review of the Japanese NCP

- The Japanese NCP will complete the questionnaire provided by the OECD Secretariat.
- Stakeholders of the Japanese NCP, namely Keidanren (BIAC Japan), Rengo (TUAC Japan) and NPOs (UN Global Compact Network Japan and Sustainability Forum Japan (former GRI Japan)), will give feedback to the peer learning and review team about the Japanese NCP by answering the questionnaire provided by the OECD Secretariat.

17 April 2012 (morning): Interview-based peer learning and review on the Japanese NCP's structure and activities

An Interview and dialogue session between the peer learning and review team and the Japanese NCP will be held in the morning of 17 April 2012. A wrap-up session between the peer learning and review team and the Japanese NCP, as well as a confidential session exclusively for the peer learning and review team will be held in the morning of 19 April 2012. (Draft Schedule is attached in the annex.)

17-18 April 2012 (afternoon): Dialogue with stakeholders on Corporate Social Responsibility in Japan

In order to make the dialogue interactive, the peer learning and review team members are kindly requested to make short presentations about good/best practices in their countries, for example, on NCP's activity on handling specific instances, enterprises' effort to promote CSR based on the OECD Guidelines and other internationally recognized instruments, in addition to giving advice to Japanese enterprises on sustainability. The peer learning and review team members will be contacted in due course regarding the themes of their presentations.

- Dialogue between the peer learning and review team and Japanese business industries (Organized by Keidanren in the afternoon of 17 April 2012).
- Dialogue between the peer learning and review team and labour unionists (Organized by Rengo in the morning of 18 April 2012).
- Dialogue between the peer learning and review team and NPOs (Organized by UN Global Compact Japan Network and Sustainability Forum Japan (former GRI Japan) in the afternoon of 18 April 2012).

After the visit to Tokyo: Write-up of a peer learning and review report and presentation to the OECD Investment Committee

Based on the outcome of the visit to Tokyo, the peer learning and review team will prepare a report and present the results to the OECD Investment Committee by December 2012.

Other

Information on institutional arrangements, promotional activities, handling of specific instances, and proactive agendas of the Japanese NCP will be indicated in the questionnaire and provided by the middle of March 2012.

27 February 2012

ANNEX 2

AGENDA FOR THE JAPANESE NCP'S PEER LEARNING AND REVIEW VISIT 17-19 APRIL 2012

Morning, Tuesday, 17 April 2012 [Open to all participants]	
Dialogue with Japanese NCP	
10:00-10:30	Orientation and general briefing
10:30-12:00	<p>DIALOGUE WITH JAPANESE NCP</p> <p>Introductory remarks by Mr. Toru Shimizu, Director, OECD Division, Economic Bureau, MOFA</p> <p>Presentation by Ministry of Economy, Trade and Industry (METI) and MOFA on CSR in Japan</p> <ul style="list-style-type: none"> - Mr. Shin Hosaka, Director, Corporate Affairs Division, Economic and Industrial Policy Bureau, Ministry of Economy, Trade and Industry <p>Dialogue with NCP Japan</p>
Afternoon, Tuesday, 17 April 2012 [Only for governments and NCP participants]	
Dialogue with business partners	
14:30-16:00	SESSION I: DIALOGUE WITH JAPANESE ENTERPRISES
14:30-14:40	Opening remarks on objectives of the Session I by Mr. Toru Shimizu, Director, OECD Division, Economic Bureau, MOFA
14:40-14:55	<p>Presentations on CSR by the Keidanren Secretariat</p> <ul style="list-style-type: none"> - Mr. Tadashi Saito, Director, Political & Social Affairs Bureau - Mr. Ichiro Hara, Deputy Director, International Affairs Bureau
14:55-15:45	<p>Presentations on CSR by Japanese enterprises</p> <p><i>Nippon Steel Corporation</i></p> <ul style="list-style-type: none"> - Mr. Soichiro Sakuma, Managing Director - Ms. Kumiko Nibun, Manager, Legal Department <p><i>Panasonic Corporation</i></p> <ul style="list-style-type: none"> - Ms. Megumi Kitagawa, General Manager, CSR Office <p><i>Sony Corporation</i></p> <ul style="list-style-type: none"> - Ms. Asako Nagai, Senior CSR Manager, Corporate Social Responsibility Department <p><i>Mitsui & Co. Ltd</i></p> <ul style="list-style-type: none"> - Mr. Koji Tanaka, Deputy General Manager, Planning & Coordination Department, Corporate Planning & Strategy Division <p><i>Sompo Japan Insurance Inc</i></p> <ul style="list-style-type: none"> - Mr. Hiroyasu Adam Ichikawa, Senior Deputy Manager, Corporate Social Responsibility Office, Corporate Communications Department
15:45-16:00	Q &A session and exchange of views

16:15-17:30		SESSION II: PRESENTATIONS BY VISITING TEAM MEMBERS
16:15-16:20		Opening remarks by Mr. Katsutoshi Saito, Chairman, BIAC Japan, Keidanren
16:20-16:25		Remarks on the OECD Peer Learning and review by Mr. Toru Shimizu, Director, OECD Division, Economic Bureau, MOFA
16:25-16:35		Presentation on promotion, follow-up and outreach of the OECD MNEs Guidelines by Prof. Dr. Roel Nieuwenkamp, Chair of the Working Party of the OECD Investment Committee; Director for Trade Policy and Globalisation, Trade Policy Department, Ministry of Economic Affairs, Agriculture and Innovation, the Netherlands
16:35-17:15		Presentations by visiting team members Presentations on NCP activities (e.g. specific instances): 8 minutes each <i>The Netherlands</i> Prof. Dr. Joske Bunders, independent member of the National Contact Point of the Netherlands, Director of the Athena Institute for research on innovation and communication in Health and Life Sciences at the Faculty of Earth and Life Sciences (FALW) of the VU University Amsterdam <i>Norway</i> Prof. Dr. Hans Petter Graver, Dean of the Faculty of Law at the University of Oslo and the leader of the Norwegian NCP Presentation on cooperation between NCPs and stakeholders including business and related outreach activities: 8 minutes each <i>Germany</i> Mr. Jan Rudolph, Counsellor, International Investment, Federal Ministry of Economics and Technology (BMWI) <i>The United Kingdom</i> Mr. Danish Chopra, Investment Team Trade Policy Unit, Europe, Trade & International Affairs, Department for Business, Innovation and Skills <i>The United States of America</i> Mr. Alan K. Yu, U.S. National Contact Point, OECD Guidelines for Multinational Enterprises, U.S. Department of State
17:15-17:30		Q & A Session
Morning, Wednesday, 18 April 2012 [Open to all participants]		
Dialogue with trade unionists		
10:00-12:00	1.	Opening remarks by Rengo Joint presentation by UK NCP and TUAC on the reform of UK NCP: About 30 minutes including Q & A <i>United Kingdom</i> Mr. Danish Chopra, Investment Team Trade Policy Unit, Europe, Trade & International Affairs, Department for Business, Innovation and Skills <i>TUAC</i> Ms. Kirstine Drew, Policy Advisor Dialogue between the visiting team and Rengo

Afternoon, Wednesday, 18 April 2012 [Open to all participants]	
Dialogue with NPOs	
14:30-15:30	Dialogue between the visiting team and the Secretariats of the Sustainability Forum Japan and the UN Global Compact Japan Network
15:30-17:30	ROUNDTABLE CO-ORGANISED BY THE SUSTAINABILITY FORUM JAPAN AND THE UN GLOBAL COMPACT JAPAN NETWORK
15:30-15:35	Opening remark by Mr. Tachi Kiuchi, Chairman, Sustainability Forum Japan
15:35-15:50	Self-introduction of participants
15:50-16:10	Keynote Speech by Prof. Dr. Roel Nieuwenkamp, Chair of the Working Party of the OECD Investment Committee; Director for Trade Policy and Globalisation, Trade Policy Department, Ministry of Economic Affairs, Agriculture and Innovation, the Netherlands
16:10-16:40	Presentations on CSR by Japanese side <i>Sompo Japan Insurance Inc</i> Mr. Hiroyasu Adam Ichikawa, Senior Deputy Manager, Corporate Social Responsibility Office, Corporate Communications Department <i>Hitachi, Ltd</i> Mr. Keiichi Ushijima, Manager, CSR Promotion Department, CSR Division <i>Takeda Pharmaceutical Company Limited</i> Mr. Koichi Kaneda, Senior Director CSR, Corporate Communications Department <i>Fuji Xerox Co., Ltd</i> Mr. Hiromasa Asano, Manager, Planning Group, Corporate Social Responsibility Department
16:45-17:30	Dialogue among participants

Morning, Thursday, 19 April 2012 [Only for governments and NCP participants]	
Wrap-up session(s)	
10:00-12:00	WRAP-UP SESSION(S)
Afternoon, Thursday, 19 April 2012 [Open to all participants]	
Field visit to a nearby company @ Hitachi Industrial Equipment Systems Co., Ltd., Narashino, Chiba	
14:30-15:20	INTRODUCTORY SESSION
14:30-14:40	Photo session and self-introductions
14:40-14:45	Opening remarks by MOFA
14:45-14:50	Welcome speech by a company representative
14:50-15:20	Short explanation about the company
15:30-16:30	TOUR OF THE COMPANY
16:40-17:20	DIALOGUE BETWEEN THE VISITING TEAM AND COMPANY REPRESENTATIVES
17:20-17:25	Remarks from a visiting team representative

ANNEX 3
QUESTIONNAIRE FOR NCP REVIEWERS

Voluntary peer learning and review of the Japanese NCP for the
OECD Guidelines for Multinational Enterprises

17-19 April 2012

Hosted by the Japanese NCP
Address: Ministry of Foreign Affairs,
Kasumigaseki 2-2-1, Chiyoda-ku
Tokyo, Japan

The NCP mechanism is the most distinctive feature of the OECD Guidelines for Multinational Enterprises. It is the only leading international corporate responsibility instrument to provide a non-judicial grievance mechanism concerning non-observance by enterprises of the principles and standards for RBC in a global context consistent with applicable laws and internationally recognized standards. The Guidelines are also the only multilaterally agreed code of business conduct that governments are committed to promoting.

These features have significantly been reinforced by the 2011 Review of the Guidelines. At the October 2011 meeting of the OECD Investment Committee Working Party, Japan offered to conduct a volunteer peer learning and review of its NCP in the first half of 2012. This peer review has now been scheduled to take place at Japan's Ministry of Foreign Affairs on 17-19 April 2011.

The present document contains a tentative list of leading questions that reviewer NCPs may wish raise on this occasion with the Japanese NCP. These questions address each of the main tasks assigned to NCPs under the recently revised Procedural Guidance on the implementation of the OECD Guidelines.

Any enquiry should be addressed to:

Emi Mashiko (emi.mashiko@mofa.go.jp)

Rumi Ariyoshi (rumi.ariyoshi@mofa.go.jp)

Naoto Nakagawa (naoto.nakagawa@mofa.go.jp)

I. Institutional Arrangements

Since 2002, the Japanese NCP has been organized as an inter-ministerial body composed of the Ministry of Foreign Affairs, the Ministry of Health, Labor and Welfare and the Ministry of Economy, Trade and Industry.

Japanese NCP is assisted by an advisory body – the NCP Committee of Japan – established in 2008. Besides the Japanese NCP, the Committee consists of Japan Business Federation (Keidanren), which is also a member of BIAC, and, the Japanese Trade Union Confederation (Rengo), which is a member of TUAC.

According to the Procedural Guidance, NCPs are expected to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

Question 1. What are the main considerations that have determined the current structure of the Japanese NCP? What are the advantages and disadvantages of your government-based structure? Have there been any complaints that the current arrangements may lead to potential conflict of interest between promoting the interest of Japanese business abroad and monitoring their observance of the Guidelines?

Question 2. How does the Japanese NCP ensure that it is sufficiently visible, accessible, transparent, and accountable? What are the criteria it uses to live up to these expectations? What are the main challenges the Japanese NCP faces in this respect? Does it seek regular feedback from stakeholders and other NCPs on how the Japanese NCP is fulfilling these tasks? Please substantiate your answers as appropriate.

Question 3. Do you think that stakeholders are satisfied with the current institutional arrangements? Do they consider they are adequately represented in the NCP advisory body? How does the Japanese NCP

reach out or take into account the views of civil society at large? Have stakeholders been arguing in favor of creation of an oversight body of some kind? Please elaborate as appropriate.

Question 4. Is the Japanese NCP closely involved in the work on other leading initiatives such as the UN Global Compact and the implementation of the ILO Tripartite MNE Declaration or that of the High Commissioner on Human Rights? Is there sufficient coordination between various agencies working on corporate responsibility? How this cooperation could be reinforced? Could this help raising awareness and further the effectiveness of the Guidelines? Please elaborate.

Question 5. Do you consider that Japan's NCP have sufficient human and financial resources to meet the expectations of the revised Procedural Guidance? What are the major challenges? Are these resources expected to rise in the future?

Question 6. Are you considering some changes to your current institutional arrangements? If so which ones and why? Do you think that the supporting role of the OECD Secretariat should be expanded? Please elaborate as appropriate

II. Promotional Activities

The OECD Guidelines for Multinational Enterprises are the most comprehensive recommendations for RBC and draw their legitimacy from being government-endorsed. Promotional activities are crucial for raising awareness of the Guidelines and increasing their use by enterprises. The role of promotional activities have been reinforced by the Update.

Question 1. Do you consider that the Guidelines are sufficiently known and used by Japanese enterprises and integrated into their codes of conduct? What knowledge do you have of the actual use of the Guidelines by Japanese enterprises? Could anything be created for enterprises that refer to the Guidelines in their corporate social policies? If so which ones?

Question 2. Do the Japanese NCP and Japanese stakeholders cooperate in raising understanding of the value of the Guidelines for business? What do you consider good practices? How can the supporting role of stakeholders be increased? Please illustrate with examples.

Question 3. Do you consider that the communication tools or avenues available to the Japanese NCP (website, brochures, presentations at public events...) are adequate? Can these communication tools on the Guidelines be improved, including in non-adhering countries?

Question 4. Do you consider that the implementation procedures of the Guidelines and, more particularly the role of the Japanese NCP, in solving problems and assisting companies to address corporate responsibility challenges, is well understood?

Question 5. Should the role of the OECD Secretariat in promoting the Guidelines be expanded? If so, please elaborate.

III. Learning from Individual Specific Instances

According to the Procedural Guidance, the Japanese NCP is expected to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.

The Japanese NCP is also expected to offer a forum for discussion and assist the business community, worker organizations, other non-governmental organizations and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.

Consideration of a specific instance may involve three stages (initial assessment of the merits of a case, the provision of good offices, including mediation and the conclusion of the procedures). As a general principle, NCPs should strive, to the extent possible, to conclude the procedure within 12 months from the receipt of the specific instance with the publication of the results at the end of the procedure. Sensitive business and stakeholder information should be protected.

Japan has accepted four specific instances which are still pending. Three concern the activities of Japanese companies in non-adhering countries.

Question 1. What are the main challenges the Japanese NCP face with respect to the consideration of specific instances? Do you see some specific reasons for the relatively small number of complaints brought to the Japanese NCP so far? Can this be explained by cultural considerations? What has been the nature of the complaints brought under the Guidelines?

Question 2. Because three of the four complaints accepted by the Japanese NCP have originated in non-adhering countries, you may wish to comment its experience as a “home” NCP first. How has the Japanese NCP overcome the absence of an NCP at the location of the dispute to get the facts of the cases? Has it sought to address the issues with the parent companies first? Has it sought to collect evidence in the non-adhering country using its embassy or other channels? Please elaborate.

Question 3. What is your experience in cooperating with other NCPs? Do you consider that the Procedural Guidance is sufficiently clear on how to handle various situations? What is your expectation as regards other NCPs, notably in terms of responsiveness and communication?

Question 4. Has the existence of parallel proceedings been a constraint in coming to a resolution of the specific instance? Is this only a matter of delay(s) in waiting for the outcome of a parallel proceeding or this is a more substantive problem as the issues that could be addressed by the Japanese NCP? Have the clarifications brought by the Update changed the perspective of the role Japanese NCP should play in the context of parallel proceedings?

Question 5. Does the Japanese NCP consider that its role as a “convenor” or “mediator” in a complaint should be strengthened or expanded? What particular skills and resources are required to fulfil these two central roles? Can these two functions be conducted side by side? Has the Japanese NCP had all the support that it needs to engage into effective mediation? Is the mediation function itself governed by the Japanese legislation?

Question 6. What challenges has the NCP encountered in bringing the parties to a constructive dialogue? Lack of cooperation by one of the party? Reluctance to share information? Confidentiality? Negative public campaigns? Please elaborate.

Question 7. Do you consider that the indicative time frames for the various stages of a specific instance agreed during the Update are particularly challenging? How do you address the need of users of the specific instance facility to have predictable and clear procedures? Please elaborate.

Question 8. The revised Procedural Guidance provides that the NCP should, after consultations with the parties and subject to confidentiality considerations, make the results of the procedures (including intermediary stages) publicly available. What has been the practice of the Japanese NCP so far and what

changes might be expected in the future? Is it the intention of the Japanese NCP to formulate follow-up recommendations where appropriate and ensure appropriate monitoring?

Question 9. What kind of support you may be looking for in the future? Depository information on cases? Capacity building on mediation? Data bank on relevant mediators?

IV. Proactive Agenda

The introduction of the “proactive agenda” is one of the major innovations found in the revised Procedural Guidance. The OECD Investment Committee is expected, in cooperation with NCPs and stakeholders, to support the positive contributions that enterprises can make and assist them identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries with a view of helping them observe the Guidelines.

Question 1. How does the Japanese NCP perceive its role with respect to the “proactive agenda”?

Question 2. What do you see as priorities for future proactive agenda work and why? How could the proactive agenda be promoted in Japan?

ANNEX 4
QUESTIONNAIRE FOR STAKEHOLDERS

Voluntary peer learning and review of the Japanese NCP for the
OECD Guidelines for Multinational Enterprises

17-19 April 2012

Hosted by the Japanese NCP
Address: Ministry of Foreign Affairs,
Kasumigaseki 2-2-1, Chiyoda-ku
Tokyo, Japan

The NCP mechanism is one of the most distinctive and unique features of the OECD Guidelines for Multinational Enterprises. These features have significantly been reinforced by the 2011 Review of the Guidelines. At the October 2011 meeting of the OECD Investment Committee Working Party, Japan offered to conduct a volunteer peer review of its NCP in the first half of 2012. This peer review has now been scheduled to take place on 17-19 April 2011 according to the attached schedule.

The present document contains a tentative list of questions that reviewer NCPs may wish to raise on this occasion with Guidelines stakeholders on various aspects of NCP performance.

Any enquiry should be addressed to:

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Naoto Nakagawa (naoto.nakagawa@mofa.go.jp, +81-(0)3-5501-8348)

Lead Questions

I. Institutional arrangements

Since 2002, the Japanese NCP has been organized as an inter-ministerial body composed of the Ministry of Foreign Affairs, the Ministry of Health, Labor and Welfare and the Ministry of Economy, Trade and Industry.

Japanese NCP is assisted by an advisory body – the NCP Committee of Japan –established in 2008. Besides the Japanese NCP, the Committee consists of Japan Business Federation (Keidanren), which is also a member of BIAC, and, the Japanese Trade Union Confederation (Rengo), which is a member of TUAC.

According to the Procedural Guidance, NCPs are expected to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

Question 1. Do you consider the Japanese NCP sufficiently visible? Accessible? Transparent? Accountable? Please substantiate your answers with representative illustrations.

Question 2. Do Guidelines stakeholders consider they are adequately represented in the NCP advisory body? How does the Japanese NCP reach out or take into account the views of non-participating stakeholders? Should further thought be given to provide for a more inclusive role to Japanese stakeholders that are not currently represented in the NCP Committee of Japan? Please elaborate.

Question 3. How often does the NCP advisory body (the NCP Committee of Japan) meet? Is this done on a regular basis or as the need arises? Is the frequency of meetings adequate? Please elaborate as required.

Question 4. How is the agenda of the stakeholder meetings advisory body meetings decided? Can any issue related to the implementation of the Guidelines be discussed? What issues have dominated the discussions so far?

Question 5. How do stakeholders generally seek their role in assisting NCP better perform their various tasks? How can this role be further enhanced?

Question 6. Do you consider that Japan's NCP have sufficient human and financial resources to fulfill their various tasks as further outlined in this questionnaire? Please elaborate.

II. Promotional activities

The OECD Guidelines for Multinational Enterprises are the most comprehensive recommendations for RBC and draw their legitimacy from being government-endorsed. Promotional activities are crucial for raising awareness of the Guidelines and increasing their use by enterprises. Because of their practical exposure to RBC issues, stakeholders have also an important role to play in encouraging more responsible corporate behavior.

Question 1. Do you consider that the Guidelines are sufficiently known and used by Japanese enterprises and integrated into their decision-making processes? What knowledge do you have of the actual use of the Guidelines by enterprises?

Question 2. How can Japan's NCP and Japanese stakeholders further cooperate in raising understanding of the value of the Guidelines with business? What further assistance by the NCP do you think would be recommendable in the future? Please illustrate with examples.

Question 3. Do you consider that the implementation procedures of the Guidelines and, more particularly the role of the Japanese NCP, in solving problems and assisting companies to address corporate responsibility challenges is well understood? Please provide comments.

Question 4. Do you consider that the communication tools or avenues being used by the Japanese NCP (website, brochures, presentations at public events...) are adequate? Can your own communication tools on the Guidelines be improved?

Question 5. Do you consider that the OECD Secretariat's role as a communication and resource base for promoting the Guidelines should be expanded? If yes, please explain.

III. The specific instance facility

According to the Procedural Guidance, the Japanese NCP is expected to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.

The Japanese NCP is also expected to offer a forum for discussion and assist the business community, worker organizations, other non-governmental organizations and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.

Consideration of a specific instance may involve three stages (initial assessment of the merits of a case, the provision of good offices, including mediation and the conclusion of the procedures). As a general principle, NCPs should strive, to the extent possible, to conclude the procedure within 12 months from the receipt of the specific instance with the publication of the results at the end of the procedure. Sensitive business and stakeholder information should be protected.

Japan has accepted four specific instances which are still pending. Three concern the activities of Japanese companies in non-adhering countries.

Question 1. What is your general assessment of the role that the Japanese NCP has played in addressing issues raised under the specific instance facility?

Question 2. Do you see merit in promoting further the “mediation role” of Japanese NCP?

Question 3. What constructive role can the Japanese NCP play in the case of existence of parallel legal proceedings?

Question 4. How do you evaluate the protection of confidential or sensitive information? What level of transparency is needed to arrive at a successful outcome?

Question 5. What do you see the main difficulties in handling specific instances that arise in a non-adhering country (ies)? What “best advice” can you provide to the Japanese NCP?

IV. Proactive Agenda

The introduction of the “proactive agenda” is one of the major innovations brought by the 2011 revision of the Procedural Guidance. The OECD Investment Committee is accordingly expected, in cooperation with National Contact Points and stakeholders, to support the positive contributions that enterprises can make and assist them identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

Question 1. What in your view is the role of a “proactive agenda” should be?

Question 2. What do you see the priorities for future work and why?

Question 3. What do you see the role for the Japanese National Contact Point in implementing a proactive agenda in Japan?

Question 4. How can Japanese stakeholders contribute to the implementation of the proactive agenda?

ANNEX 5

CHARTER OF CORPORATE BEHAVIOUR FOR GAINING PUBLIC TRUST AND RAPPORT KEIDANREN (JAPAN BUSINESS FEDERATION)

Charter established: Sept. 14, 1991
2nd version released: Dec. 17, 1996
3rd version released: Oct. 15, 2002
4th version released: May 18, 2004
5th version released: Sept. 14, 2010

A Corporation has a responsibility to contribute toward the economic development of society by creating added value and generating employment through fair competition and should also make their existence useful to society at large. To this end, regardless of its location, a corporation is expected to respect human rights, comply with relevant laws and regulations, observe the spirit of international rules, discharge their social responsibility with a strong sense of ethical values and contribute toward sustainable development of society by acting in line with the following ten principles.

1. Develop and provide socially beneficial and safe goods and services that give satisfaction to consumers and customers.
2. Engage in fair, transparent and free competition and ensure that transactions are appropriate. Also, maintain a sound and proper relationship with political bodies and government agencies.
3. In addition to communicating with shareholders, interact extensively with the public, and disclose corporate information actively and fairly. Also, protect and properly manage personal and customer data and other types of information.
4. Respect diversity, character and personality of employees and ensure a safe and comfortable working environment, thereby providing a sense of comfort and richness.
5. Proactively initiate measures in acknowledgment of environmental issues, the common challenges they pose to humanity and their importance to its existence and livelihood.
6. Actively engage in community involvement activities including philanthropy as a "good corporate citizen."
7. Resolutely confront antisocial forces and organizations that pose a threat to the order and security of civil society and sever all relations with such individuals and groups.
8. In line with the globalization of business activities, comply with laws and regulations of the countries and regions where its business operations are based and respect human rights and other

international norms of behavior. Also, conduct business by taking into consideration the local culture and customs as well as the interests of stakeholders, and contribute toward the development of the local economy and society.

9. Top management recognizes that it is its role to realize the spirit of this Charter and takes the lead in an exemplary manner to implement the Charter within the corporation and its entire corporate group, while encouraging its business counterparts to follow the same example. Furthermore, it should always try to keep abreast of what people inside and outside the corporation say and set up an effective mechanism throughout the corporation to implement the Charter.
10. In case the Charter is violated, top management should clarify both internally and externally that it will take charge to resolve the situation, determine the cause of infringement and make efforts to prevent similar violations in the future. At the same time, top management should promptly make full public disclosure, explain what has occurred, and, upon determining the source of competence and responsibility, impose strict disciplinary action against those held responsible, including top management itself.

Note: Charter of Corporate Behaviour and its Implementation Guidance of Keidanren is available at <http://www.keidanren.or.jp/en/policy/csr/tebiki6.pdf>

ANNEX 6

PROCEDURAL GUIDELINES FOR THE JAPANESE NCP UNDER THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

November 25, 2011

The Japanese NCP

I. Organisation of the Japanese National Contact Point

A. *Members of the Japanese National Contact Point (hereinafter referred to as “Japanese NCP”)*

- Ministry of Foreign Affairs (OECD Division, Economic Affairs Bureau): MOFA
- Ministry of Health, Labour, and Welfare (International Affairs Division, the Office of the Minister): MHLW
- Ministry of Economy, Trade and Industry (Trade and Investment Facilitation Division, Trade and Economic Cooperation Bureau): METI

B. *Japanese NCP Committee*

In order to effectively implement the OECD Guidelines for Multinational Enterprises (hereinafter referred to as “OECD Guidelines”), the Japanese NCP Committee has been established as a framework for exchanging information on a regular basis (four times per year in principle) with relevant business communities and labour organisations.

The Japanese NCP Committee is comprised of the Japanese NCP, Keidanren (Japan Business Federation, the Japanese Committee of the Business and Industry Advisory Committee [BIAC] to the OECD), and Rengo (Japanese Trade Union Confederation, which is a member of the Trade Union Advisory Committee [TUAC] to the OECD). Keidanren and Rengo are required to maintain confidentiality on issues of specific instances the Japanese NCP Committee deals with.

II. Handling of Specific Instances

A. *Basic Principle*

In accordance with the OECD Guidelines, along with Implementation Procedures, the Japanese NCP is to provide a place for discussion and to support the resolution of specific instances with the implementation of efficient and timely measures by the parties involved, in compliance with any applicable laws.

B. Concrete Procedure

1. Acceptance of Submitted Complaints

(1) All complaints are to be submitted in writing. The following information should be clearly provided.

a. Information on complainants

- Name of the complainant and/or name of the representative of the complainant's organization (hereinafter referred to as "a complainant")
- Contact address
- Telephone and fax number
- Email address

b. Information on MNEs in question

- Name of the company
- Location of the company (country and address)
- Reasons why the complainant considers that the company is regarded as a multinational company.

c. Contents of complaints

- Contents of issues raised which describe the company's non-adherence to the OECD Guidelines
- Descriptions with reference to the paragraphs of the OECD Guidelines which have been breached
- Background of the issues raised (such as past and present circumstances of the issues and reason why the complainant decided to submit a complaint to the Japanese NCP)
- A list of requests to the Japanese NCP for assistance to help them resolve the problems

d. Attachments of relevant documents supporting the complaints (where applicable)

- Information referencing articles of related laws and regulations of the country where the issues occurred
- If the specific instance is also dealt with by other domestic or international proceedings (hereinafter referred to as "in a parallel procedure"), documents on the identity of the country or organization conducting the parallel procedure, the issues raised, the progress situation and future prospects

(2) Issuances of acceptance letters

In cases where the abovementioned information is clearly provided, the Japanese NCP sends an acceptance letter to the complainant. MOFA drafts the acceptance letter, which is sent under the name of the Japanese NCP (MOFA, MHLW and METI). When sending the letter, the following should be taken into consideration.

a. If submitted complaints lack necessary information in order to raise a specific instance, the Japanese NCP, as needed asks the complainant to provide it.

b. The Japanese NCP checks whether the complainant is a party and/or an individual directly involved, or someone designated by the parties involved authorizing the power of attorney.

c. The Japanese NCP checks whether the issues raised in the complaints are based on the OECD Guidelines.

d. The OECD Guidelines, the Procedural Guidelines for the Japanese NCP under the OECD Guidelines (a Japanese and/or English version) are to be enclosed in the acceptance letter from the Japanese NCP.

e. The acceptance date of the submitted complaint is set at the date when the acceptance letter by the Japanese NCP is sent to the complainant.

f. Since all issues raised are subject to public release based on the consent of the parties involved, the Japanese NCP consults beforehand with the complainant regarding which contents the complainant does not wish to publicly release.

g. In cases where other NCPs are involved in the submitted complaints, the Japanese NCP informs the relevant NCPs of the raised issues and consults with the coordinating NCPs to agree on which NCP will take the lead. The Japanese NCP sends an acceptance letter to the complainant only when the Japanese NCP will take the lead.

(3) Denial of Submitted Complaints

In cases where the Japanese NCP considers the submitted complaints as not germane to the contents of the OECD Guidelines, such as when the issues raised do not involve MNEs and/or are not based on the OECD Guidelines, the Japanese NCP refuses the submitted complaints and notifies the complainant.

Furthermore, in cases where issues raised occur in other countries also adhering to the OECD Guidelines, the Japanese NCP does not accept the submitted complaint and requests that it be submitted to the NCP of the relevant nation. The Japanese NCP then notifies the NCP of the relevant country. At the same time, the Japanese NCP cooperates as much as possible on the request of the NCP of the relevant country.

2. *Conducting the Initial Assessment (Indicative timeframe: three months)*

(1) Productions of initial assessments

After accepting the submitted complaints, in accordance with “C. Implementation in Specific Instances” of the Procedural Guidance of the Implementation Procedures of the OECD Guidelines, as well as taking into consideration Paragraph 25 of the Commentary on the OECD Guidelines’ Implementation Procedures, the Japanese NCP produces an initial assessment in writing, and notifies the complainant and the enterprise in question, whether the complaint “merits further examination.”

(2) Relation to Judicial Proceedings

When dealing with specific instances in which the complaints submitted are in a parallel procedure, the Japanese NCP deals with the specific instance while taking into consideration Paragraph 26 of the Commentary on the OECD Guideline’s Implementation Procedures. Especially, in cases where the issues raised are in the middle of judicial proceedings, the Japanese NCP deals with it while taking into consideration the independence of the judiciary system. In cases where the issues are specific domestic instances in Japan, when necessary, the Japanese NCP consults with the Ministry of Justice on whether actions could be problematic to the independence of the judiciary system.

(3) Parallel Proceedings

Even in cases where the complaints are already in the process of examination under the laws and regulations and/or systems of relevant countries, the specific instances are still considered as deserving further examination where there is space for the Japanese NCP to work in. At the same time, in cases

where judicial proceedings have already been concluded; complaints are considered as deserving no further examination by the Japanese NCP.

(4) The Japanese NCP may conduct the following actions, where necessary, in order to produce an initial assessment:

a. In cases where a special instance is relevant with ministries other than the Japanese NCP (MOFA, MHLW and METI), the Japanese NCP informs the relevant ministries of the complaints and asks for their views and opinions.

b. Notify the enterprise in question on the contents of the OECD Guidelines and the issues raised, and request views and opinions. Consult beforehand with the enterprise regarding which contents the enterprise does not wish to be publicly released; all other issues raised shall be subject to public release.

c. Conduct interviews with the business community and labour organizations where necessary.

d. Examine relations between the issues raised and existing laws and regulations.

e. In cases where a complaint has originated in a non-adhering country and a Japanese MNE is in question, the Japanese NCP deals with such specific instances by taking into consideration the sovereignty of the non-adhering country. Furthermore, the Japanese NCP notifies the government of the non-adhering country of the issues, and requests the relevant government to take appropriate measures in accordance with its domestic laws and regulations.

e. Gather related information via relevant Japanese embassies and/or consulates.

(5) In cases where the complaint is considered problematic in the context of domestic laws and regulations of Japan, the Japanese NCP could notify in written form the complainant on the necessity to follow domestically prescribed procedures (including judicial proceedings). The enterprise in question could also be notified of the above in written form.

(6) In cases where the Japanese NCP decides that complaints are considered not to merit further examination for specific instances, based on C.3 a) of the Procedural Guidance of the OECD Guidelines and paragraph 27 of the Commentary on the Implementation Procedures of the OECD Guidelines; the Japanese NCP issues a statement which describes, as a general rule, the parties involved, issues raised, and the reasons for the NCP's decision. MOFA drafts the assessment, which is sent under the name of the Japanese NCP (MOFA, MHLW and METI).

3. *Provision of assistance to the parties involved (Indicative timeframe: six months)*

When the Japanese NCP decides that complaints are considered to merit further examination for specific instances, the Japanese NCP provides assistance to the parties involved based on C.2 of the Procedural Guidance of the OECD Guidelines and paragraphs 28 to 30 of the Commentary on the Implementation Procedures of the OECD Guidelines.

4. *Issuances of final statements or reports (Indicative timeframe: three months)*

The Japanese NCP issues a final statement or report when concluding the NCP procedure based on C.3 of the Procedural Guidance of the OECD Guidelines and paragraphs 31 to 37 of the Commentary on the Implementation Procedures of the OECD Guidelines. MOFA drafts the statement or report, which is sent under the name of the Japanese NCP (MOFA, MHLW and METI).

a. In cases where the parties involved have reached an agreement, the Japanese NCP issues a report which describes, as a general rule, the parties involved, issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached.

b. In cases where no agreement is reached or when a party is unwilling to participate in the NCP procedures, the Japanese NCP issues a statement which describes, as a general rule, the parties involved, issues raised, the reasons why the Japanese NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. An opportunity is provided to the parties involved in order to express opinions in the draft statement or the report. However, the Japanese NCP has discretion to decide whether to change the draft statement or report.

c. After producing the statement or the report, the Japanese NCP closes the NCP procedure by sending the statement or the report and by issuing the publicly available result of the procedure. Regarding the report produced when the parties involved have reached an agreement, the Japanese NCP issues the report after the parties involved agree on what extent of the agreement is to be made publicly available. The result of the procedure is to be on the OECD website in Japanese and English.

III. Other relevant issues

1. Promotion and dissemination of the OECD Guidelines

As a proactive measure to prevent specific instances from arising, the Japanese NCP, where possible, in collaboration with the business community and/or labour organizations, promotes and disseminates the OECD Guidelines by making use of opportunities, such as economic/labour-related seminars, dialogues and consultations.

2. Relation to the business community and labour organisation

At each stage of the NCP procedure, which is abovementioned in II (such as conducting the initial assessment, provision of assistance to the parties involved and issuance of the final statement or report), information is to be shared with the Japanese NCP Committees through reports from the Japanese NCP on progress of a specific instance at a Japanese NCP Committee meeting unless it is deemed the confidentiality of the information serves the greatest benefit in effectively implementing the OECD Guidelines.

3. Enforcement of the Procedural Guidance for the Japanese NCP under the OECD Guidelines 2011

This procedural guidance is to be enforced from November 25, 2011. However, specific instances raised before May 2011, when the OECD Guidelines were updated, are to be dealt with under the OECD Guidelines made in 2000 and under the Procedural Guidance for the Japanese NCP under the OECD Guidelines made in 2008.

Note: The Procedural Guidelines for the Japanese NCP under the OECD Guidelines and other related documents, including a provisional translation of the OEC Guidelines into Japanese, are available at <http://www.mofa.go.jp/mofaj/gaiko/csr/housin.html> (Japanese website).



www.oecd.org/daf/investment/guidelines